



185 IBLA 403

ED HAGBERG



Decided June 25, 2015



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

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IBLA 2015-27

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Appeal from a September 30, 2014, decision of the Utah State Office, Bureau of Land Management, wherein the agency declared the Gypsum Hollow #1, UMC 371503, unpatented mining claim forfeited by operation of law.

Affirmed.

1. Mining Claims: Defective Filing -- Mining Claims: Claim Maintenance Fees: Small Miner Exemption

In order for a document pertaining to maintaining a mining claim to be filed timely with BLM, it must be either received by BLM on or before the due date, or postmarked on or before the due date and received by the appropriate BLM office within 15 calendar days after the due date (or on the next business day if the 15th day is not a business day). 43 C.F.R. § 3830.5.

APPEARANCES: Ed Hagberg, Springville, Utah, *pro se*.

OPINION BY CHIEF ADMINISTRATIVE JUDGE JONES

On October 31, 2014, Ed Hagberg appealed from a September 30, 2014, decision of the Utah State Office, Bureau of Land Management (BLM). In that decision, BLM informed Mr. Hagberg that it received his 2015 Maintenance Fee Waiver Certification (Waiver Certification), Proof of Labor, and a \$10 check for the Gypsum Hollow #1, UMC 371503, unpatented mining claim on September 5, 2014. Because the documents were received in an envelope that did not contain a U.S. Postal Service postmark, BLM could not accept those documents as timely filed. Consequently, BLM held that the claim was forfeited. For the reasons discussed below, we affirm.

[1] The issue in this appeal is whether Mr. Hagberg timely paid yearly maintenance fees or filed a Waiver Certification on or before September 2, 2014 (September 1, 2014, was a non-business day). See 43 C.F.R. § 1822.14; *Underwood*

Livestock, Inc., 165 IBLA 128, 131 (2005). Under applicable law, the holder of an unpatented mining claim is required to pay a maintenance fee for each claim on or before September 1 of each year or the next business day thereafter if September 1 is a non-business day. 30 U.S.C. § 28f(a) (2012); *see* 43 C.F.R. §§ 1822.14, 3834.11(a)(2). A mining claimant who holds no more than 10 mining claims may be eligible for a waiver of the maintenance fee requirement. 43 C.F.R. §§ 3835.1, 3835.11(a). Either maintenance fee payment or the Waiver Certification must be filed with BLM on or before September 1 of each assessment year. 43 C.F.R. § 3835.10(a). A document is “filed” either when it is received in the appropriate office on or before the due date, or when it is postmarked on or before the due date and received by BLM within 15 calendar days after the due date. 43 C.F.R. § 3830.5. In the absence of a timely-filed maintenance fee payment or Waiver Certification, BLM properly declares the claim forfeited by operation of law. 43 C.F.R. § 3835.92(a); *see Joe Bob Hall*, 135 IBLA 284, 286 (1996).

In this case, BLM’s records do not show that the maintenance fee was timely paid or that a Waiver Certification was postmarked and received by BLM on or before the due date. In absence of proof of a timely maintenance fee payment or filing a Waiver Certification, we must uphold BLM’s decision, which is the subject of this appeal.

On appeal, Mr. Hagberg does not contend he timely paid the maintenance fee, but rather asserts he timely mailed his Waiver Certification. Appellant explains that on Friday, August 29, 2014, he sent the Waiver Certification to BLM, but the post office did not postmark the envelope. The record shows the envelope bares no postal service mark. Under 43 C.F.R. § 3830.24(c), the document must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date. *Consolidated Golden Quail Resources, Ltd.*, 179 IBLA 309, 313 (2010). This Board has held on numerous occasions that the one who chooses the means of delivery of the document must accept the responsibility for, and bears the consequences of, any error in the document’s handling. *See, e.g., Petro-Hunt Corp.*, 124 IBLA 318, 320 (1992). Thus, the fact that the envelope did not have a postmark and therefore will not be considered filed on the day Appellant believes he mailed it cannot be overcome by any perceived failure on the part of postal employees. Under the circumstances, we find Appellant’s Waiver Certification was not timely filed.

Since Appellant neither paid the maintenance fee nor timely filed a Waiver Certification, his mining claim is automatically forfeited under the plain language of the statute. *Otto Adams*, 155 IBLA 1, 4 (2001) (citing 28 U.S.C. § 28f(d)(3) (Supp. IV 1998)). The statute provides: “Failure to pay the claim maintenance fee or the

location fee as required by sections 28f to 28i of this title shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.” Forfeiture means the voidance or invalidation of an unpatented mining claim. See 43 C.F.R. § 3830.5. Since Mr. Hagberg did not pay his maintenance fee or file his Waiver Certification by September 2, 2014, his claim was automatically forfeited.

In ruling that Mr. Hagberg’s claim has been forfeited, we considered all of his arguments, including that he has timely filed necessary documents with BLM for at least 20 years. However, the Board has held that even a perfect record of compliance does not necessarily demonstrate that an individual must have complied in a subsequent instance. *David F. Owen*, 31 IBLA 24, 28 (1977). Thus, Mr. Hagberg’s prior compliance does not constitute evidence negating the absence of a timely-filed Waiver Certification by September 2, 2014.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

_____/s/_____
Eileen Jones
Chief Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Administrative Judge